In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, PLAINTIFF IN error,
v.
WALTER S. HARSHA. } No. 401.

MOTION TO ADVANCE.

Now comes the United States, by the Solicitor-General, and moves the court to advance the above-entitled cause to such early hearing as it may deem proper, and for reason therefor states that this is one of a number of suits brought on behalf of the defendant in error under the act of March 3, 1887 (24 Stats., 505), in all of which cases substantially the same question is involved, but in no instance has the amount in controversy in any one suit been sufficiently large to give the right of appeal.

The circuit court of appeals has time and again been called upon to pass upon the same question, and, to get an authoritative decision which will govern both claimant

and the accounting officers, it has seen fit to ask the instructions of this court upon the following questions:

First question:

Can such a judgment, rendered under the act of March 3, 1887, in the circuit or district court, be brought before this court for review in any other mode than as provided in section 707 of the Revised Statutes for the review by the Supreme Court of judgments of the Court of Claims, to wit, by appeal?

Second question:

Did the act of July 31, 1894, above referred to, ex proprio vigore create a vacancy in the office of clerk of the circuit court for the eastern district of Michigan by reason of the fact that at the time of its taking effect the then lawful incumbent of that office was also holding the office of clerk of the circuit court of appeals of the sixth circuit?

Third question:

Does the general rule that officers de facto may not recover by suit compensation for services rendered as such apply to a case in which the incumbent holds his office by the continued assent and approval of the sole appointing power under a bona fide claim of title to the office when no other person has at any time made any claim of title thereto, and when the only defects in his title are a failure on the part of the appointing power to make a formal reappointment and a failure on the part of the incumbent formerly to requalify after a technical vacation of the office originally held by him under a valid appointment and qualification:

In addition to the foregoing, the question involved is one in which the Treasury Department is much interested, and which they have requested may be passed upon by this court.

The determination of these questions will govern other cases involving the same question, and early judgments in which cases the Government will be compelled to certify to Congress for appropriation. Hence the necessity for prompt action.

Respectfully submitted.

J. K. RICHARDS,
Solicitor-General.